

## REMARKS

Claims 24-29 are currently pending in the application. By this amendment, claim 24 is amended. Support for the amendment can be found in Figure 5 and at page 7 of the specification, for example. No new matter is added. Reconsideration of the rejected claims in view of the above amendments and the following remarks is respectfully requested.

### *Withdrawal of Finality of Rejection*

In accordance with MPEP §706.07(c), Applicants request withdrawal of the Final Rejection as being premature. The Examiner is of the opinion that the claims, as now presented are drawn to the same invention as claimed in earlier application serial no. 09/764,294. Applicants do not respectfully agree with this assessment.

Applicants note that application serial no. 09/764,294 was originally filed with two sets of claims. The first set of claims (e.g., claims 1-9) were directed to a filter and more specifically a mattress-like filter. The second set of claims (e.g., claims 10-23) were directed to a tank with a mattress-like filter. Claim 20, though, which is dependent on claim 10, was directed to integrally formed troughs. Claim 20 accordingly includes the combination of elements of claim 10.

However, none of these claims are directed to a tank, alone, having integrally formed troughs forming a channel. This is matter which was not considered by the Examiner in application serial no. 09/764,294. Accordingly, the claims as now presented are not drawn to the same invention as claimed in the earlier application serial no. 09/764,294.

Additionally, Application serial no. 09/764,294 was issued as USPN 6767457. This issued patent has one independent claim which recites, in part,

a tank having an inlet and an outlet and troughs forming channels integrally in at least the bottom and side walls of the tank;

at least one mattress-like filter placed within the tank, the

mattress-like filter having aggregate material sealed therein.

This claim scope is different from that originally filed with the present application. Accordingly, the claims of the present invention which do not address the mattress filter are not of the same scope, nor are they the same invention. Thus, Applicants now request withdrawal of the finality of the rejection.

***35 U.S.C. §102 Rejection***

Claims 24-27 and 29 were rejected under 35 U.S.C. §102(e) for being anticipated by U. S. Patent No. 6,280,614 to Berg. This rejection is respectfully traversed.

The claimed invention is directed to a recirculating filter tank system adapted for use in a septic system. The tank includes a bottom and sides, and an inlet and outlet. An effluent distribution system includes troughs forming channels integrally in at least the bottom and sides of the tank. The channels include at least one bottom channel spanning substantially between ends of the tank at the bottom and additional channels intersecting the bottom channel.

Berg does not show these features. Instead, Berg shows ribs 4. These ribs are not an effluent distribution system. Instead, as disclosed at col. 4, these ribs are used for stacking of the tanks and to insert baffles therein. More specifically, Berg discloses at col. 4, that

... the lower portion 1 is preferably shaped such that it is stackable, especially when provided with internal hollow ribs 4. .... Another advantage associated with using internal ribs 4 is that one rib 4 provides support for an optional baffle 7 installed in the tank 200.

Berg further shows stepped ribs 710. These ribs, however, are used for structural support and are not an effluent distribution system.

Additionally, Applicants also submit that the claimed invention includes both ribs and the integral troughs. These elements are different from one another. In contrast, the

Berg reference only shows ribs. The ribs and integral troughs cannot be interpreted as the same elements. Therefore, claim 24 includes allowable subject matter, not shown in the Berg reference.

Accordingly, Applicants respectfully request that the rejection over claims 24-27 and 29 be withdrawn.

***35 U.S.C. §103 Rejection***

Claim 28 was rejected under 35 U.S.C. §103(a) over Berg. This rejection is respectfully traversed.

Applicants agree with the Examiner to the extent that Berg shows a baffle. However, the baffles of Berg are placed across the tank in order to compartmentalize the tank. The baffles also are designed to retain solids (col. 4, lines 24-25.) The baffles are not placed on the bottom or the sides of the tank in order to allow effluent to flow from a filter to the troughs formed in the side or bottom of the tank.

Accordingly, Applicants respectfully request that the rejection over claim 28 be withdrawn.

**CONCLUSION**

In view of the foregoing amendments and remarks, Applicant submits that all of the claims are patentably distinct from the prior art of record and are in condition for allowance. The Examiner is respectfully requested to pass the above application to issue. The Examiner is invited to contact the undersigned at the telephone number listed below, if needed. Applicant hereby makes a written conditional petition for extension of time, if required. Please charge any deficiencies in fees and credit any overpayment of fees to Attorney's Deposit Account No. 23-1951.

Respectfully submitted,



Andrew M. Calderon  
Registration No. 38,093

McGuireWoods, LLP  
Suite 1800  
1750 Tysons Blvd.  
McLean, VA 22102  
(703) 712-5426